IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 19TH NOVEMBER 2007 / 28TH KARTHIKA 1929

WP(C).No. 26450 of 2007(W)

OS.96/2007 of II ADDL.SUB COURT,ERNAKULAM

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PETITIONER:

M/S M.A.K.AGRO COMMODITIES
TRADING COMPANY PVT LTD., G-211, PANAMPILLY NAGAR,
MAIN AVENUE, COCHIN-36, REP.BY ITS MANAGING
DIRECTOR, MR.M.A.AZAD, AGED 52,
S/O LATE T.MOHAMMED GHANI.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G
SRI.E.M.MURUGAN

RESPONDENTS:

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1. M/S BRILLIANT EXPORTS, PALLURUTHY,
KOCHI, REP.BY ITS MANAGING PARTNER,
M.L.KARTHIKA KUMARI, W/O LATE RATNAM PILLAI,
RESIDING AT G-13, PANAMPALLY NAGAR, COCHIN-36.

2. M.L.KARTHIKAKUMARI, AGED ABOUT 60,
W/O LATE RATNAM PILLAI, RESIDING AT G-13,
PANAMPILLY NAGAR, COCHIN-36.

3. R.SELVAKUMAR, AGED ABOUT 37,
S/O LATE RATNAM PILLAI, RESIDING AT
G-13, PANAMPILLY NAGAR, COCHIN-36.

4. R.DEVAKUMAR, AGED ABOUT 35, PARTNER,
S/O LATE RATNAM PILLAI, RESIDING AT
G-13, PANAMPILLY NAGAR, COCHIN-36.

5. R.SIVAKUMAR, AGED ABOUT 33,
S/O LATE RATNAM PILLAI, RESIDING AT G-13,
PANAMPILLY NAGAR, COCHIN-36.

6. R.SREEKUMAR, AGED ABOUT 33,
S/O LATE RAMAM PILLAI, RESIDING AT G-13,
PANAMPILLY NAGAR, COCHIN-36.

7. SHRI MONCY DANIEL, S/O C.DANIEL,
PANACHOOR HOUSE, MULLACKAL WARD, ALAPPUZHA,
MULLACKAL VILLAGE, AMBALAPUZHA TALUK.

8. KARUR VYSYA BANK, M.G.ROAD,
ERNAKULAM, REP.BY ITS MANAGER.

R4 BY ADV. SRI.K.R.SUNIL
R2, 5 & 6 BY ADV SHRI. PEEYUS A.KOTTAM
R8 BY ADV SHRI. SRI.P.S.GEORGE
R7 BY ADV SRI.JOBY CYRIAC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P(C) 26450/07

EXT.P1: A TRUE PHOTOSTAT COPY OF O.S. NO: 96/2007 ON THE FILES OF II ADDL. SUB COURT, ERNAKULAM

EXT.P2: -DO- OF I.A. NO: 1038/2007 IN O.S. NO: 96/2007 ON THE FILES OF II ADDL. SUB COURT, ERNAKULAM

EXT.P3: -DO- COPY OF CLAIM PETITION AS I.A. NO: 2153/07 ON THE FILES OF ADDL. SUB COURT, ERNAKULAM

EXT.P4: -DO- OF THE CLAIM PETITION AS I.A. NO: 1428/2007 ON THE FILES OF SUB COURT, ERNAKULAM.

EXT.P5: -DO- COPY OF THE OBJECTIONS TO THE CLAIM PETITIONS IN I.A. NO: 2153/07

EXT.P6: -DO- COPY OF THE OBJECTION TO THE CLAIM PETITIONS IN I.A. NO: 1428/2007

EXT.P7: -DO- COPY OF THE REPLY AFFIDAVIT FILED BY THE 7THE RESPONDENT

EXT.P8: -DO- COPY OF THE AMENDMENT APPLICATION I.A. NO: 2847/2007

EXT.P9: -DO- OF THE IMPLEADMENT PETITION I.A. NO: 2901/2007

jj /TRUE COPY/

P.A. TO JUDGE

M.N. KRISHNAN, J.

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W.P.C. NO. 26450 OF 2007

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Dated this the 19th day of November, 2007.

J U D G M E N T

This writ petition is filed seeking a direction to the 2nd Additional Subordinate Judge, Ernakulam to consider and dispose of Exts.P8 and P9 in O.S.96/07 before passing orders in Exts.P3 and P4 claim petitions. The plaintiff in the suit obtained an order of attachment before judgment. Aggrieved by the same the 7th respondent has preferred a claim application before the Court and it is pending consideration. Meanwhile, the plaintiff has moved an application for amendment to the effect that the transfer is a fraudulent transfer to defeat the interest of the creditor including the plaintiff and for also impleadment of the purchaser namely the 7th respondent. Both the sides have not disputed on one point that the document bears the date prior to the institution of the suit but it is registered subsequent to the institution of the suit, ie, after the service of attachment.

Whether the amendment is to be allowed or the impleadment is to be allowed are matters that has to be decided by the Court on hearing both the parties in that application. But if it is to be allowed then there will be some impact for this amendment in relation to the claim application. Therefore I direct the 2nd Additional Subordinate Judge, Ernakulam to consider and dispose of Exts.P8 and P9 applications at the earliest within a time frame of one month from today and then to dispose of Exts.P3 and P5 claim applications in accordance with law.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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